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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/747,753

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Thomas Arnold Anschutz

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EXAMINER

JUNTIMA, NITTAYA

ART UNIT

PAPER NUMBER

2616

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/747,753	<b>Applicant(s)</b> ANSCHUTZ ET AL.	
	<b>Examiner</b> NITTAYA JUNTIMA	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 11, 12, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This action is in response to the amendment filed on 1/10/2008.
2. Claims 1-18 are pending.
3. Claims 1-2, 7-8, and 13-14 remain rejected under 35 U.S.C. 102(e).
4. Claims 3-4, 9-10, 15, and 16 are rejected under 35 U.S.C. 103(a).
5. Claims 5-6, 11-12, and 17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 7-8, and 13-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Jha (US 7,161,946 B1).

Regarding claims 1-2, 7-8, and 13-14, Jha teaches a method of operating a communications network, which is a MPLS network (MPLS network 132, Fig. 5), comprising:

Providing a plurality of redundant links (LSPs 144A-C) between a first network node (136A) and a second network node (136B). See col. 4, lines 1-4, 19-22.

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Associating a first MPLS identifier with a first one of the plurality of redundant links and a second MPLS identifier with a second one of the plurality of redundant links (since label 114, Fig. 3 is used to identify a particular LSP, col. 3, lines 50-52 and col. 4, lines 25-28, there must be a first MPLS label 114 that is used to identify LSP 144A and a second MPLS label 114 that is used to identify LSP 144B), the first and second identifiers being associated with a regulatory constraint enforceable by a governmental body (the MPLS network 132) (since MPLS labels 114 are created and processed within a MPLS network 132, they must then be associated with a regulatory constraint of MPLS protocol enforceable by the MPLS network 132, col. 3, lines 47-52).

Routing packet traffic that is marked with the first identifier to the first one of the plurality of redundant links and traffic that is marked with the second identifier to the second one of the plurality of redundant links so that operation of the communications network is in compliance with the regulatory constraint (frames containing corresponding first and second MPLS labels must be routed through the MPLS network according to their MPLS labels and in compliance with MPLS protocol, col. 4, lines 25-56, see also Figs. 7 and 6).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 3, 9, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jha (US 7,161,946 B1) in view of Mauger (US 6,886,043 B1).

Regarding claims 3, 9, and 15, Jha does not explicitly teach that the first node is associated with a first LATA and the second node is associated with a second LATA.

As shown in Fig. 6, Mauger teaches that a first tandem MPLS router 61b (corresponding to the first node is associated with a first LATA) is connected to a second tandem MPLS router 61b (corresponding to the second node is associated with a second LATA) via a national tandem MPLS router 61c. See col. 2, lines 4-12 and col. 7, lines 7-22

Given the teaching of Mauger, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Jha to include the first and second LATAs such that that the first node would be associated with a first LATA and the second node would be associated with a second LATA as claimed. The suggestion/motivation to do so would have been to carry traffic over a network at local and national level while utilizing a common transport protocol, i.e., MPLS (col. 1, lines 28-50).

10. Claims 4, 10, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jha (US 7,161,946 B1) in view of Mauger (US 6,886,043 B1), and further in view of Lewis (US 6,442,169 B1).

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Regarding claims 4, 10, and 16, the combined teaching of Jha and Mauger does not teach that the first one of the plurality of redundant links is associated with a first IEC and the second one of the plurality of redundant links is associated with a second IEC.

As shown in Fig. 2 of an analogous art of circuit switching, Lewis teaches that a plurality of redundant links associated with a plurality of IXCs 214-218 are connected between two access tandems 106 and 220 which are located in different LATAs (equivalent to the first one of the plurality of redundant links is associated with a first IEC and the second one of the plurality of redundant links is associated with a second IEC). See also col. 17, lines 33-50.

Given the teaching of Lewis, it would have been obvious to one skilled in the art to further modify the combined teaching of Jha and Mauger to incorporate the concept of using a plurality of IXCs 214-218 to provide different links connecting two different LATAs such that the first one of the plurality of redundant links would be associated with a first IEC and the second one of the plurality of redundant links would be associated with a second IEC. The suggestion/motivation to do so would have been to route long different traffic over different IXC carriers as taught by Lewis (col. 17, lines 40-43).

### ***Response to Arguments***

11. Applicant's arguments filed on 1/10/2008 have been fully considered but they are not persuasive.

A. The applicant argues that the MPLS protocol defined by the IETF is not a regulatory constraint because it does not constitute a set of laws or regulations that may be enforced.

In response, it is submitted that the MPLS protocol defined by the IETF is not a regulatory constraint because it does not constitute a set of laws or regulations that may be enforced. However, the amended portion recites, in part:

the first and second identifiers being associated with a regulatory constraint enforceable by a governmental body.

Therefore, with the broadest reasonable interpretation, the Examiner interprets the amended portion as the first and second MPLS labels 114 used to identify LSP 114A and 114B, respectively, must be associated with a control limitation/restriction of the MPLS protocol that is executed/applied by the MPLS network 132 in Fig. 5 in order for the MPLS labels 114 to be created and processed within the network (col. 3, lines 47-52). In other words, because the MPLS labels 114 are generated by node(s) in the MPLS network and used with the LSP through the network, therefore, they must be associated with a set of rules/limitations that is under control of the MPLS network.

Note that the amended portion does not recite that the regulatory constraint is that traffic that spans multiple LATAs must be carried by an IEC and the Enforcement Bureau of the Federal Communications Commission may enforce the regulatory constraint under the provisions of the Federal Telecommunications Act of 1996 as stated on page 7 of the Remarks. Neither does the claim restrict “regulatory constraint” to a set of laws that may be enforced.

Thus, this is no distinction between a regulatory constraint of the MPLS protocol that is enforceable by the MPLS network and the regulatory constraint on traffic spanning multiple LATAs that is enforceable by the Enforcement Bureau of the Federal Communications Commission. In addition, this is no distinction between a regulatory constraint of the MPLS

protocol that is enforceable by the MPLS network and the claimed regulatory constraint enforceable by a governmental body.

Therefore, limitation is met and the rejection is maintained.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NITTAYA JUNTIMA whose telephone number is (571) 272-3120. The examiner can normally be reached on Monday through Friday, 8:00 A.M - 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nittaya Juntima/  
4/12/08

/Melvin Marcelo/  
Primary Examiner, Art Unit 2616